

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

GENE FRASE,

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Plaintiff,

CIVIL ACTION NO. 5:19-CV-00139-RWS

V.

JAMES MCCORMICK, ET AL.,

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Defendants.

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ORDER

The Plaintiff Gene Frase, an inmate of the Bowie County Correctional Center proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. This Order concerns the motion to dismiss filed by the Defendant Dexter Payne, Deputy Director of the Arkansas Department of Corrections.

Plaintiff contended he was assaulted by two jail inmates, Lewis and Jones, on or around October 25, 2019. He claimed the correctional officers at the jail were deliberately indifferent to his safety following the assault.

Plaintiff stated Director Payne “is the Deputy Director of the Arkansas Department of Corrections. He is legally responsible for operations of institutions and grievance procedures for the exhaustion of administrative remedies and welfare of inmates.” He further alleged Director Payne “ignore[d] conditions and treatment that exposes me to harm and led to violation of rights.” There are no other mentions of Director Payne in Plaintiff’s complaint.

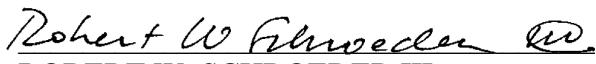
Director Payne filed a motion to dismiss, to which Plaintiff did not respond. After review of the pleadings, the Magistrate Judge issued a Report recommending the motion to dismiss be granted and Director Payne dismissed from the lawsuit. Plaintiff received a copy of this Report on August 24, 2020, but filed no objections thereto; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjection-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 61) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the motion to dismiss filed by Director Dexter Payne (Docket No. 22) is **GRANTED** and the claims against Director Payne are **DISMISSED WITH PREJUDICE**. Director Payne is dismissed as a party to this lawsuit. The dismissal of these claims shall have no effect upon the remaining claims and defendants in this lawsuit.

So ORDERED and SIGNED this 23rd day of September, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE